

REMARKS

The Office Action, mailed December 19, 2008, considered claims 1-22, 24-31 and 33-38. Claims 18-21, 27, 28 and 38 were allowed. Claims 1-9, 11-17, 22, 24-26, 30, 31, 33 and 37 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4-8, 10-16, 18, 22 and 31-33 of *Cote* (U.S. Patent No. 5,938,729). Claims 31 and 33-36 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.¹

By this paper, claims 31 and 33 have been amended, while no claims have been added or cancelled. Accordingly, following entry of this paper, claims 1-22, 24-31 and 33-38 remain pending, of which claims 1, 30, 31, 33 and 37 are the only independent claims at issue.

1. Rejections under 35 U.S.C. § 101

As reflected above, claims 31 and 33-36 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, the claims were rejected for reciting a computer-readable medium which term the specification describes as encompassing a network or other communications network. (Office Action, p. 4).

In that regard, Applicant notes that the claims did not recite a "computer-readable medium" in isolation, but instead recited a computer-readable medium that stores computer-executable instructions. In Applicant's disclosure, effectively two types of computer-readable media are disclosed. For example, storage-type media is described and includes, by way of example, "RAM, ROM, EEPROM, CD-ROM or other optical disk storage, magnetic disk storage or other magnetic storage devices, or any other medium which can be used to store the desired computer-executable instructions or data structures and which can be accessed by a [] computer." (p. 8, ll. 10-14). The disclosure then goes on to describe the second type of computer-readable media which is a connection-type medium. In that regard, the specification notes that "[w]hen information is transferred or provided over a network or another communications connection to a computer, the computer properly views the connection as a computer-readable medium." Applicant respectfully submits that by previously limiting the claims to computer-readable media that stores the instructions, the claims previously required at least some of the media be storage-type media as opposed to connection-type media. Nevertheless, in the interest in expediting prosecution, Applicant has amended the claims to expressly recite what was already implicit, namely that the computer-readable media is "storage-type" media. In view of the foregoing, Applicant respectfully submits

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

that the claims require at least some media that is not a connection-based media, and are therefore statutory.

2. Rejections for Obviousness-Type Double Patenting

Claims 1-9, 11-17, 22, 24-26, 30, 31, 33 and 37 were further rejected on the ground of obviousness-type double patenting in view of various claims in *Cote* (U.S. Patent No. 5,938,729). In response, Applicant notes that a terminal disclaimer is being submitted herewith, and disclaims the terminal portion of the present application to the extent it would extend beyond the term of the *Cote* patent. Accordingly, Applicant respectfully submits that the obviousness-type double patenting rejection is also overcome.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

Dated this 19th day of May, 2009.

Respectfully submitted,



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